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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,000	12/15/2003	James R. Fischer	4741-00010	2976
26753	7590	08/02/2006		
ANDRUS, SCEALES, STARKE & SAWALL, LLP 100 EAST WISCONSIN AVENUE, SUITE 1100 MILWAUKEE, WI 53202			EXAMINER MAGUIRE, LINDSAY M	
			ART UNIT	PAPER NUMBER
			3634	
DATE MAILED: 08/02/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/736,000

Applicant(s)

FISCHER, JAMES R.

Examiner

Lindsay M. Maguire

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 2 and 6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-5 and 7-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/1/04</u> . | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

This Final Office Action is mailed in response to the application filed on December 15, 2003, the response to the Election/Restriction requirement filed on November 14, 2005, and amendments filed on May 2, 2006.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 7, 8, 10-13, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,944,203 (Vlah et al. '203).

Vlah et al. '203 disclose a slatwall assembly featuring:

- a. A plurality of slatwall sections (10)
- b. A continuous rear wall (11)
- c. Each section having an upper and lower board (Fig. 6)
- d. Internal spacer segments between boards (12)
- e. External spacer segments (13)
- f. Board has: top (14), front (16), rear (18), bottom (17)
- g. Securement to supporting surface (30)
- h. Adjacent boards engage with groove connector (21)

- i. Hangers include bracket with offset upper portion (B)
- j. Hanger bracket lower section engages front wall (16, Fig. 7)
- k. Lip is double walled (Fig. 6, formed by front 16 and rear 18)
- l. Chamber is web free (Fig. 6)
- m. L-shaped slots extend continuously (Fig. 1)

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vlah et al. '203 alone.

Vlah et al. '203 disclose a slatwall assembly as described above. Vlah et al. does not disclose the assembly made from plastic. Plastic is a commonly used in the construction of racks. Accordingly, it would have been obvious to one with ordinary skill in the art at the time of the invention to use plastic to make the rack of Vlah et al. '203. The motivation would be to reduce costs.

Claims 4-5, and 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vlah et al. '203 as applied to claims 1-3, 7-8, 10-13, 16, and 18-20 above, and further in view of U.S. Pat. No. 3,045,961 (Cygan '961).

Vlah et al. '203 disclose a slat wall assembly having the features listed above. Vlah et al. '203 do not disclose the possibility of making this assembly from high impact polystyrene. Cygan '961 teaches a slatwall assembly constructed from high impact polystyrene (col. 3 lines 9-29). It is clear that the hanger (5) of Cygan '961 would be able to hold 25 lbs 1 foot from the front of the rack. Accordingly, it would have been obvious to one with ordinary skill in the art at the time of the invention use high impact polystyrene in the construction of the rack as described by Vlah et al. '203. The motivation to use HIPS would be to reduce the cost of the rack.

Regarding the dimension listed in claims 5 and 15. The boards of Vlah et al. '203 appear to be spaced by approximately three inches and the rear panel appears to have a thickness of about 1/16 of an inch. Accordingly, it would have been obvious to one with ordinary skill in the art at the time of the invention to space the boards at any desired increments and make the rear panel of any desired thickness. The motivation would be to optimize the rack for a desired purpose. Applicant is referred to *In re Aller*, wherein it is stated "it is not inventive to discover the optimum or workable ranges by routine experimentation" (220F.2d 454, 456, 105 USPQ 233, 235).

Claims 9 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vlah et al. '203, alone.

Vlah et al. '203 disclose each channel section to include two board members. Vlah et al. '203 does not teach away from including more than two board members. Accordingly, it would have been obvious to one with ordinary skill in the art at the time of the invention to include as many board sections on each channel as the material permits. The motivation to include more than two boards on each channel section would be to reduce assembly time.

### ***Response to Arguments***

Applicant's arguments filed May 4, 2006 have been fully considered but they are not persuasive.

Applicant's argument that "The rear wall 11 of the channeled slatwall 10 is clearly not continuous given the break where it bends to form each P-shaped channel" (Paragraph 4 of "Remarks") is acknowledged. However, Vlah et al. '203 claims, "a single continuous piece of material having: a substantially planar rear wall" (column 5, lines 49-50). Applicant states that, "breaks in the rear wall needed to form P-shaped channels from the single piece of sheet metal" however, in that statement applicant states "from the single piece of sheet metal" which inherently means that the rear wall is in fact continuous.

In response to applicant's argument that Cygan '961 bears no resemblance to Vlah et al. '203, the test for obviousness is not whether the features of a secondary

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reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lindsay M. Maguire whose telephone number is 571-272-6039. The examiner can normally be reached on M-F: 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lindsay M. Maguire  
7/25/06



**RICHARD E. CHILCOT, JR.**  
**SUPERVISORY PATENT EXAMINER**